are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Statement.

On September 16, 1960, the Colorado Attorney General made formal complaint to the Grievance Committee of the Colorado Supreme Court against John H. Gately, an attorney, seeking an investigation as to whether Gately should be disbarred (Tr. 2-4). The complaint alleged that Gately had filed a petition to vacate opinion and judgment for fraud in a case in which, the petition charged, a former Chief Justice of the Colorado Supreme Court had, while a member of the Court, accepted a bribe to influence or bring about the Court's decision. The complaint further alleged that Gately gave a copy to a reporter for The (Colorado Springs) Gazette Telegraph for the purpose of having the contents of the petition published therein, and that as a result the contents were published (Tr. 3). The complaint alleged, on information and belief, that the bribery charge was false and made without probable cause, and that Gately's actions were malicious, and designed to obtain publicity for himself and to discredit and bring disgrace upon the Colorado Supreme Court, and further that publication of the article "will tend to destroy public confidence in the administration of justice by the courts of this State" (Tr. 3-4).

The Colorado Supreme Court cited Gately to show cause why his license to practice law in Colorado should

not be suspended during the pendency of the proceedings for disciplinary action (Tr. 6).

At the hearing on the citation, Gately and other witnesses were questioned by the court, by the Attorney General and by Gately's attorney regarding the issues raised by the complaint. After hearing, the court on October 31, 1960 ordered Gately suspended from the practice of law in Colorado until further order of the court (Tr. 65).

At the hearing on September 23, petitioner, having been subpoenaed as a People's witness (Tr. 8), testified that she wrote the news story in question, with a copy of the petition before her, on the day (but before) Gately filed it in court (H. Tr. 76-8). She also testified that she obtained a copy of the petition from Gately at the time he filed it, but that she released her story for publication only after she had examined the petition filed in court and found it identical with her copy (H. Tr. 77-8, 249-50). She testified that she would not have released the story for publication until she had been permitted to read the record copy, without any condition that its contents be suppressed, for verification of her story (H. Tr. 250). She declined, however, to answer questions of the court whether or not she had obtained a copy of the petition from Gately, or from someone else, prior to the time the petition was filed in court (H. Tr. 74-5, 79, 140).

The hearing was recessed and was reconvened on October 26, 1960, when the court directed petitioner to answer the questions whether Gately gave or showed her a copy of the petition before filing it, and from whom she received an advance copy (H. Tr. 248-250). When petitioner declined to answer, she was adjudged in contempt of court, and sentenced to thirty days' imprisonment (H. Tr.

267-8). The court then granted leave to petitioner's attorney to file a brief (H. Tr. 270).

Although not represented by counsel before the court below until shortly before being held in contempt (H. Tr. 267-8), petitioner on two occasions based her refusal to answer the court's questions as to her source upon the freedom of the press as guaranteed by the First Amendment to the United States Constitution (H. Tr. 76, 255). Moreover, the "Petition to Vacate Contempt Order" (Appendix B hereto) was based in part on a claim of the protection against disclosure of a news source afforded by the Fourteenth Amendment to the Constitution of the United States.

The petition to vacate the contempt order, with supporting brief, was considered by the court on the papers and, with petitioner's motion for oral argument, was denied *en banc* on November 3, 1960 (Tr. 122-3). On November 10, 1960, this Court entered an order staying execution of the judgment pending the disposition of this petition for certiorari.

Reasons for Granting the Writ.

At stake here is the public's right to know the news—and the press' freedom to gather it.

This case presents a question of vital importance to every newspaper in the United States.

The Court below has imposed a sanction which will result in a direct and substantial impediment on the gathering of news. The further effect of its decision is to stifle and frustrate in particular the efforts of the press in one of its historical functions: to acquaint the community with charges of corruption in government.

Unless reversed by this Court, the decision below will have an immediate effect on the willingness of news sources

to transmit news in confidence to reporters and news media. It will lend aid to any forces seeking to choke off the flow of news to news media. Compulsory disclosure "may entail an abridgment of press freedom by imposing some limitation upon the availability of news."

In permitting this needless restraint on the gathering of news, the decision below is contrary to the policies enunciated by this Court on the necessity of protecting the flow of news along its entire length—from news sources to the public. It disregards the recognition by this Court that disclosures forced by state action, no less than direct state sanctions, may effectively abridge First Amendment rights protected by the Fourteenth Amendment. It is irreconcilable with the preferred place given by this Court to First Amendment rights.

The Colorado court has imposed the restraint in the first case on this issue in which the guarantee of freedom of the press insured by the Fourteenth Amendment has been claimed to override the interest of a State in compelling testimony in its judicial proceedings. The case resolves that conflict against the Fourteenth Amendment, though the testimony sought was in no way essential to the proceeding.

The communication of news to reporters on condition the source not be disclosed is a constant occurrence. Similarly, despite the comparative novelty of the issue here, the question whether such sources must be disclosed has been, and will continue to be, a frequently recurring one, both in the courts and in the legislatures.

The correct rule of law may be that the people's Constitutional right to a free press forbids compulsory disclosure of confidential news sources in every case, or that it does not forbid such disclosure in any case. The correct

rule may, on the other hand, lie somewhere between, in the "delicate and difficult" task of balancing Constitutional demands against competing interests.

The result of such a balancing process may well depend upon how necessary to the administration of justice is the testimony sought to be compelled. The kind of news made available by the confidential relationship may have a crucial significance in the balancing process: the public has, perhaps, a deeper interest in the publication of charges of malfeasance in office, than in learning that a prominent actress is known for a highly developed inferiority complex, and thinks she's fat.*

In any event, until this Court speaks, the correct rule cannot be known.

I.

Forced disclosure of confidential news sources is a real and dangerous restraint on news gathering.

The decision below affects with equal impact the large metropolitan daily and the small country paper. Both know that the decision imposes a serious practical obstruction to their gathering of news and will reduce in significant measure the news available to them.

The testimony in this case supports the common understanding that a great part of the news, particularly political news of wide public concern, is, for perfectly proper reasons, communicated to reporters on condition that the source not be disclosed. In such instances, refusal of the condition means refusal of the communication (H. Tr. 252-3).

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* See Joint Appendix, p. 10, *Torre* v. *Garland*, 358 U. S. 910.

To the extent that any rule of law renders such assurance unavailable or precarious, to that extent the flow of news to the public is pinched off at its source, and, *pro tanto,* the public's right to know is diminished.

An authoritive study has declared:

> "News channels which prove valuable in unearthing such examples of public scandals remain so only as long as the source remains secret. Honest officials, and occasionally dishonest persons, who can furnish necessary information, cannot afford to jeopardize their freedom or their jobs by permitting their names to be used.
>
> "No community can afford to shut off these channels of information, and no honest newspaper can afford to keep its reporters in hourly fear of contempt charges. • • •
>
> *"No information would be given if the informant did not have faith in the integrity of the reporter in the matter of withholding his name. The newspaper man would find his channels of news closed."* Siebert and Ryniker, Editor and Publisher, September 1, 1934, pp. 36-37. (Emphasis supplied.)

In twelve states—Alabama, Arizona, Arkansas, California, Indiana, Kentucky, Maryland, Michigan, Montana, New Jersey, Ohio, and Pennsylvania—the public interest in protecting news sources has been accorded express statutory recognition. Such legislation has been proposed in the Congress and in other states.•

• S. 965, 86th Cong., 1st Sess. (1959) and H. R. 355, 86th Cong., 1st Sess. (1959); as to states, see, e.g., S. Int. 79 and 1390 and A. Int. 42, 658, 810, 1070, introduced in the 1958 Session of the New York State Legislature, and House Bill 25, introduced in the 1959 Session of the Illinois General Assembly.

That forced disclosure of news sources seriously impairs the vitality of news gathering has, moreover, been repeatedly recognized in all free nations.

In summarizing the arguments made on behalf of protection of sources of information of news personnel, the Secretary General of the United Nations has written:

> "*Often scandal, corruption and malfeasance can be exposed publicly only if an informant is confident that his identity will not be disclosed.* Such anonymity may well be a part of an informant's bargain with a newspaper reporter * * *." United Nations Economic and Social Council, Document E/2693, p. 25 (1955) (Emphasis supplied.)

A noted Swiss authority has written:

> "*The most important materials would be lost to the press if the courts were permitted to search out the original author or sender or confidential source.*"*

The same thought has been expressed by the Director of the French Press Institute, who wrote:

> "Is not the right to secrecy concerning an informant a necessary condition for freedom of information? In fact, is there not the risk of drying up essential sources of information * * * if one cannot guarantee, at his request, the anonymity of an informant? And isn't it a normal and necessary part of a journalist's work to seek information from the most qualified sources even if those sources prefer to remain anonymous?" Terrou, *The Protection of Sources of Information for Journalists*, IPI Report, Bulletin of

* Gubler-Corti, *Zum Problem des Zeugnisverweigerungsrechtes der Journalisten* 203 (Switzerland 1957), quoting with approval from Keller, *Liability for Press Offenses.* (Translation supplied.)

the International Press Institute 2 (Zurich, Feb. 1958).

Protection of news sources has been accorded recognition in such diverse foreign jurisdictions as Pakistan, Sweden and the Philippines. See United Nations Economic and Social Council, Document No. E/2693, pp. 27-28 (1955).

Even those authorities not endorsing unqualified protection of news sources have fully recognized that such protection is an important constituent element of freedom of the press. Thus the late Zechariah Chafee stated:

> "* * * this power to make reporters disclose their confidential sources of information should be exercised with great caution. The power also applies to priests, as just stated, but few lawyers or judges would press a question to a priest after he had invoked his professional duty of silence. *It is similarly desirable to respect the reporter's claim of confidence except in cases of great necessity where he clearly possesses knowledge which is otherwise unobtainable.* Chafee, *Government and Mass Communications* 497 (1947)." (Emphasis supplied.)

And the New York Law Revision Commission, after completing an exhaustive study of the problems of protecting newsmen against disclosure of news sources, concluded:

> "The newsman's case differs from other cases where no privilege exists as to information obtained in confidence, in that *the newsman is performing the important function of keeping the public informed. A privilege to newsmen may therefore be justified when a privilege to others receiving information in confidence would not.*" 1949 Report of the Law Revision Commission 26. (Emphasis supplied.)

These authoritative voices, drawn from every corner of the globe where an unfettered press is recognized as a bulwark of the open society, make clear that the decision below will substantially impair the capacity of this country's press to gather the news.

II.

The First Amendment, and, as against State action, the Fourteenth Amendment, mandates against restraints at any stage of the flow of news to the public. The restraint authorized below strips from news gathering the essential protection of the Amendments.

In the past, press restraints have most frequently been sought to be applied at the stage of news dissemination. This Court has rigorously struck down each such attempted restraint. See, *e.g.*, *Near* v. *Minnesota*, 283 U. S. 697 (1931).

Judicial protection of the press has not been limited, however, to direct restraints on publication of the type illustrated by *Near*.

Freedom from forced disclosure of identity has already been accorded by the courts to the last step in the news-dissemination process—the communication from the publisher to the reader. In striking down an attempt to inquire into the identity of purchasers of certain books and pamphlets, the Court of Appeals for the District of Columbia stated:

> "To publicize or to report to the Congress the names and addresses of purchasers of books, pamphlets and periodicals is a realistic interference with the publication and sale of those writings. • • • There can be no doubt, in that case or in this one, that the realistic effect of public embarrassment is a powerful interference with the free expression of views.

• • •" *Rumely* v. *United States*, 197 F. 2d 166, 174 (D. C. Cir. 1952), *aff'd on other grounds*, 345 U. S. 41 (1953).

In the concurring opinion in this Court in the same case, it was forcefully said:

> "If the present inquiry were sanctioned, the press would be subjected to harassment that in practical effect might be as serious as censorship. • • • A requirement that a publisher disclose the identity of those who buy his books, pamphlets, or papers is indeed the beginning of surveillance of the press. • • • Once the government can demand of a publisher the names of the purchasers of his publications, the free press as we know it disappears. • • •" 345 U. S. at 57.

Freedom from forced disclosure of the identity of those who distribute or sponsor handbills and booklets has also been sustained by this Court, which has said:

> "There can be no doubt that such an identification requirement would tend to restrict freedom to distribute information and thereby freedom of expression." *Talley* v. *California*, 362 U. S. 60, 64 (1960).

In the contexts of other First Amendment rights, this Court in recent decisions has taken note of the fact that forced disclosure of certain relationships may interfere as effectively with the exercise of the protected right as a direct governmental sanction against such exercise. In *Shelton* v. *Tucker*, 81 S. Ct. 247, 251 (1960), the Court said:

> "It is not disputed that *to compel a teacher to disclose his every associational tie is to impair that teacher's right of free association*, a right closely allied to freedom of speech and a right which, like free speech, lies at the foundation of a free society." (Emphasis supplied.)

Moreover, "[a]bridgement of such rights [of free speech, press and association], even though unintended, may inevitably follow from varied forms of governmental action." *N.A.A.C.P.* v. *Alabama*, 357 U. S. 449, 461 (1958). See also *Bates* v. *Little Rock*, 361 U. S. 516, 522-23 (1960) and *Watkins* v. *United States*, 354 U. S. 178, 197-99 (1957).

With increasing frequency in recent years, attempted restraints on the press have been applied, not at the stage of the now clearly immune news-disseminating function, but instead at the very start of the news flow: the flow from the source to the press.*

This Court has already given substantial recognition to the principle that the First Amendment includes in its sweep the gathering of news. Thus, in *Associated Press* v. *United States*, 326 U. S. 1 (1945), this Court stated:

> "That [the First] Amendment rests on the assumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public, that a free press is a condition of a free society." 326 U. S. at 20.

Not only does the Amendment constitute a "command that the government itself shall not impede the free flow of ideas" (*ibid.*) but, this Court made clear, a restraint upon free access to the sources of news (although in that case by a non-governmental combination) was a restraint upon a "constitutionally guaranteed freedom." *Ibid.*

In equally compelling language, Mr. Justice Murphy in his dissent in that case stated:

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* See Wiggins, *Freedom or Secrecy* (1956), passim; see generally, Report of the Advancement of Freedom of Information Committee of Sigma Delta Chi [the professional journalistic society] (1957), pp. 12-17 (listing 63 instances of suppression of news at the source).

> "Nor can we escape the fact that *governmental action directly aimed at the methods or conditions of such collection or distribution is an interference with the press*, however differing in degree it may be from governmental restraints on written or spoken utterances themselves." *Id.* p. 51. (Emphasis supplied.)

See also *Associated Press* v. *KVOS*, 80 F. 2d 575 (9th Cir. 1935), *rev'd on jurisdictional grounds*, 299 U. S. 269 (1936).

News gathering and news dissemination are, in practice, inseparable aspects of a single publishing process. They should not be separable in law.

As a noted American reporter has stated:

> "The suggestion that freedom of reporting can exclude access to facts is extremely dangerous doctrine. The gleaning of facts is essential to knowledge, without which the right to publish is empty—and its exercise irresponsible."*

It is clear, under this Court's decisions that the due process clause of the Fourteenth Amendment protects against state action the basic freedoms, including freedom of the press, guaranteed by the First Amendment against abridgment by the federal government. *Near* v. *Minnesota*, 283 U. S. 697, 707 (1931); *Grosjean* v. *American Press Co.*, 297 U. S. 233, 243 (1936).

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* Dorothy Thompson, quoted in Douglas, *The Right of the People* 81 (1958). The author describes Miss Thompson's statement (of which the above is a part) as "stating in the finest American tradition the function of the reporter."

III.

The Colorado Supreme Court's holding cannot be reconciled with an unbroken line of decisions of this Court establishing the primacy of rights guaranteed by the First Amendment and the due process clause of the Fourteenth Amendment.

This Court stated in *Grosjean* v. *American Press Co., supra:*

> "The predominant purpose of the grant of immunity [of the First Amendment] here invoked was to preserve an untrammeled press as a vital source of public information. The newspapers, magazines and other journals of the country, it is safe to say, have shed and continue to shed, more light on the public and business affairs of the nation than any other instrumentality of publicity; and since informed public opinion is the most potent of all restraints upon misgovernment, the suppression or abridgment of the publicity afforded by a free press cannot be regarded otherwise than with grave concern • • • *A free press stands as one of the great interpreters between the government and the people. To allow it to be fettered is to fetter ourselves.*" 297 U. S. at 250 (Emphasis supplied).

When this Court has been called upon in the past to weigh First Amendment rights in the scales against other compelling rights, it has been fully cognizant of the unique nature of speech and press freedom. This Court has noted ". . . the preferred place given in our scheme to the great, the indispensable democratic freedoms secured by the First

Amendment." *Thomas* v. *Collins*, 323 U. S. 516, 530 (1945). And it has stated:

> ". . . the only conclusion supported by history is that the unqualified prohibitions laid down by the framers were intended to give to liberty of the press, as to the other liberties, the broadest scope that could be countenanced in an orderly society." *Bridges* v. *California*, 314 U. S. 252, 265 (1941).

It has cautioned that in balancing conflicting rights and interests,

> ". . . we remain mindful of the fact that the latter [freedom of press and religion] occupy a preferred position. As we have stated before, the right to exercise the liberties safeguarded by the First Amendment 'lies at the foundation of free government by free men' and we must in all cases 'weigh the circumstances and . . . appraise the . . . reasons . . . in support of the regulations . . . of the rights.'" *Marsh* v. *Alabama*, 326 U. S. 501, 509 (1946).

Decisions of this Court have made it clear that Constitutionally-protected freedoms of expression are rigidly circumscribed only when

> "• • • the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent." *Schenck* v. *United States*, 249 U. S. 47, 52 (1919).

A prior restraint on publication of charges against public officers of corruption or malfeasance of office is not justified on this ground, *Near* v. *Minnesota*, 283 U. S. 697, 716

(1931); nor may newspapermen be summarily punished for contempt when they intemperately criticize a judge's conduct of a case, since such criticism falls short of an "imminent * * * threat to the administration of justice," *Craig* v. *Harney*, 331 U. S. 367, 376 (1947). The "clear and present danger" limitation is not approached in this case.

In these decisions, this Court was not conferring special favors on a privileged industry. Instead, it was giving life and flesh to the basic assumption of a free society that an informed people can govern wisely. And it was confirming that, to assure that a people is adequately informed, the flow of news from the news source to the newsreading public must be left free of every dispensable restraint and obstruction.

The decision of the court below cannot be squared with this Court's doctrine of the preeminence of First Amendment rights. Nor can it be squared with the caution which this Court has consistently urged be exercised before any impairment of such rights be permitted.

IV.

The decision below sets a precedent for abridgment of Constitutional freedoms even in cases where the asserted countervailing State interest is inadequate on its face.

The disclosure sought by the Colorado Supreme Court in the proceeding below was neither material nor of substantial probative value.

Clearly, the answers sought from petitioner by the court below were relevant to its inquiry only if it were Gately, or someone acting under his direction, who supplied petitioner with the copy of the petition; the court was not

conducting a general investigation to find which person or persons should be proceeded against for having released in advance the copy of the petition to a newspaper reporter, but was instead attempting to determine whether Gately had done so.

Petitioner's testimony on this point, though seemingly related to the determination whether Gately "caused" the newspaper publication or made his charges maliciously, was for many reasons unnecessary to the court's decision. That it was unnecessary is obvious from the fact that, despite petitioner's refusal to testify, the court suspended Gately's license to practice until further order of the court, precisely the relief sought by the Attorney General in the proceeding below (Tr. 1, 84).

Moreover, Gately was questioned at length, and testified, on the matter (H. Tr. 42-50). The Colorado Attorney General argued in his brief below (Tr. 51), with considerable force, that the admission of Gately that he made a copy of the petition available to petitioner at the time he filed it in Court was "sufficient to show a desire to publicize himself or to discredit the Court"; if this contention is correct, it was immaterial whether he gave a copy to petitioner prior to that time.

In Colorado, the filing of grave charges against a judge by an attorney is in itself a sufficient basis for suspension from practice, where the court finds (as it apparently did here) that the charges are essentially baseless, and that the attorney failed to act with "that caution and circumspection which the gravity of the charges demanded." *People ex rel. Rogers* v. *Green*, 9 Colo. 506, 535, 13 Pac. 514, 528 (1887). In any event, the power of the Supreme Court of Colorado to disbar or suspend from practice a Colorado attorney is purely discretionary, *Colo. R. S.* § 12-1-8 (1953), and the court was able here to exercise its discretion

without the testimony it had unsuccessfully sought from petitioner.

This case is not at all, therefore, like *Garland* v. *Torre*, *supra*, where "[T]he question asked of the appellant went to the heart of the plaintiff's claim." 259 F. 2d at 550.*

Nor is it like those few state cases still authoritative in their respective jurisdictions in which an asserted privilege against disclosure of confidential news sources has been denied, since in *all* those cases, counterbalancing the public interest in protecting news sources, there was a strong public interest in both the subject matter of the litigation and, unlike this case, disclosure of the information sought.

Thus, the privilege has been denied where the nature of the information published would make its originator liable to disciplinary or criminal proceedings, and the person originating the information could not be determined without knowing the reporter's source**:

Clein v. *State*, 52 So. 2d 117 (Fla. 1951) (disclosure of source of news story revealing grand jury testimony and vote).

Plunkett v. *Hamilton*, 136 Ga. 72, 70 S. E. 781 (1911) (disclosure in police board proceeding of source of news story revealing details of police murder investigation).

Matter of Wayne, 4 U. S. D. C. Hawaii 475 (D. Hawaii 1914) (disclosure of source of news story revealing grand jury finding before it was reported to the court).

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* *Cf. Brewster* v. *Boston Herald-Traveler Corp.*, 20 F. R. D. 416 (D. Mass. 1957), a libel action in which a newspaperman was ordered to disclose on deposition the source of a memorandum upon which his allegedly libelous editorial was in part based. The court found that disclosure might lead to admissible evidence on the issue of malice.

** *Cf. Pledger* v. *State*, 77 Ga. 242, 3 S. E. 320 (1887) (author of news article convicted of criminal libel after publisher was compelled to disclose author's identity).

Ex parte Holliway, 272 Mo. 108, 199 S. W. 412 (1917) (disclosure of source of news story revealing grand jury proceedings before their public announcement).

People ex rel. Phelps v. *Fancher*, 2 Hun 226 (N. Y. Sup. Ct. 1874) (disclosure of identity of author of news article before grand jury seeking to indict him for criminal libel).

The privilege has also been denied where evidence of commission of a crime could be obtained only from the originator of the information furnished in confidence to the reporter. *People ex rel. Mooney* v. *Sheriff of New York County*, 269 N. Y. 291, 199 N. E. 415 (1936) (disclosure, to grand jury investigating gambling and lottery violations, of sources for news articles stating "policy racket" continued in operation).

V.

The state of decisional authority on the question of forced disclosure of confidential news sources points to the need for decision by this Court.

No state court has ever before ordered forced disclosure of news sources after weighing the claim that due process clause guarantees of First Amendment freedoms forbid such disclosure. With the exception of *Garland* v. *Torre*, *supra*, no case has been found in which a federal court has ever rendered such a decision.

The Court of Appeals for the Second Circuit recognized in *Torre* that the type of disclosure here sought may impinge on freedom of the press:

> "As to the Constitutional issue, we accept at the outset the hypothesis that compulsory disclosure of

> a journalist's confidential sources of information may entail an abridgment of press freedom by imposing some limitation upon the availability of news" 259 F. 2d at 548.

The decision below, though it presents squarely the conflict between an assertion of state interests with such an abridgment of press freedom, discloses no rationale for balancing these competing claims other than a refusal to grant any weight at all to the Constitutional claim (H. Tr. 76).

The importance of the question here presented to the maintenance of an informed citizenry, the paucity of authority on this issue, and the failure of the Colorado Supreme Court to lay down adequate guidelines for future decisions in this area of the law all suggest the propriety of the determination of this case by the Court.

Conclusion.

For the foregoing reasons, it is respectfully submitted that this petition for a writ of certiorari should be granted.

Respectfully submitted,

MATHIAS F. CORREA,
80 Pine Street,
New York 5, New York,
Attorney for Petitioner.

Of Counsel:

C. LEE GOODBAR, JR.,
WILLIAM D. GOODBAR,
EUGENE F. SIKOROVSKY.

January 23, 1961.

APPENDIX A.

IN THE

SUPREME COURT OF THE STATE OF COLORADO

THE PEOPLE OF THE STATE OF COLORADO, 19604 *vs.* JOHN H. GATELY, Attorney Respondent.	ORIGINAL PROCEEDING IN DISCIPLINE

ORDER.

Mrs. Vi Murphy, it is the decision of this court that you are guilty of contempt of this court for your knowing and deliberate refusal to answer lawful and proper questions asked of you by members of this court, and which you have been directed to answer as material to the pending case in suspension now before us; said questions being for you to tell this court when and from whom you procured a copy of the petition in case No. 17217 prior to its filing in this court.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that you are guilty of contempt of this court and that you be punished by being placed by the sheriff of the City and County of Denver in its common jail for a period of thirty (30) days.

The clerk of this court is ordered to prepare a mittimus in accordance herewith and furnish same forthwith to said sheriff.

The execution of the mittimus and confinement thereunder to be stayed for a period of ten (10) days hereafter, during which period counsel for Mrs. Murphy may file a brief on this matter within the first five days of said period

and the Attorney General may file a brief within the second five days.

At the expiration of said ten (10) day period Mrs. Murphy shall appear at the office of the said sheriff to begin her sentence. The contemnor to post a personal recognizance bond in the amount of one thousand dollars ($1,000) with the clerk of this court to guarantee her appearance.

By the Court, En Banc, October 26, 1960.

Mr. Justice Knauss dissents.

Mr. Justice Day not participating.

APPENDIX B.

IN THE SUPREME COURT

OF THE

STATE OF COLORADO

THE PEOPLE OF THE STATE OF COLORADO, *vs.* JOHN H. GATELY, Attorney Respondent.	No. 19604 PETITION TO VACATE CONTEMPT ORDER

IN THE MATTER OF AN ORDER ADJUDGING MRS. VI MURPHY IN CRIMINAL CONTEMPT.

COMES Now, Mrs. Vi Murphy, by and through her attorneys, C. Lee Goodbar, Jr., William D. Goodbar and Paul V. Evans, and petitions that this Honorable Court enter an Order vacating the Order of Court dated October 26, 1960, in the above captioned cause adjudging your petitioner in contempt, and

As grounds for this Petition, your petitioner avers and alleges as follows:

I.

That the material requested by questions propounded from the bench of the Colorado Supreme Court as to when and where your petitioner procured a copy of the Petition in Case No. 17217 of this Court prior to its filing in this Court is immaterial and irrelevant to the cause then pending at the time the questions were propounded and for these reasons, to punish your petitioner for declining the answer to an immaterial question would be to deprive her of her liberty without due process of law, contrary to the constitutional guarantees contained in the Colorado Constitution, Article II, Section 25 and The United States Constitution, Amendment XIV, Section 1, as more particularly set forth in the memorandum brief attached hereto;

II.

That the testimony sought to be elicited from your petitioner as to when and where petitioner procured a copy of the petition in Case No. 17217 of this Court, prior to filing in this Court, is protected by the freedom of the press as contained in the Colorado Constitution, Article II, Section 10 and the United States Constitution, Amendment XIV, Section 1, as more fully set out in the memorandum brief attached hereto;

III.

That as a matter of public policy, the evidence sought to be elicited by questions propounded from the Bench as to when and where petitioner procured a copy of the petition in Case No. 17217 of this Court prior to its filing in this Court should fall within a judicially protected area as a privileged communication between a newspaperwoman and her confidential source of information, the rationale of which is more particularly set forth in the memorandum brief attached hereto.

WHEREFORE; Petitioner prays as follows:

1. That this Honorable Court enter an order vacating and setting aside the contempt order affecting your petitioner heretofore entered dated October 26, 1960.

2. For such other and further relief as to the Court may seem just and proper in the premises.

Attorneys for Mrs. Vi Murphy,
404 Exchange National Bank Bldg.,
Colorado Springs, Colorado.

/s/ C. LEE GOODBAR, JR.
C. LEE GOODBAR, JR.

/s/ WILLIAM D. GOODBAR
WILLIAM D. GOODBAR

/s/ PAUL V. EVANS
PAUL V. EVANS

APPENDIX C.

IN THE

SUPREME COURT OF THE STATE OF COLORADO

THE PEOPLE OF THE STATE OF COLORADO, *vs.* JOHN H. GATELY, Attorney Respondent.	No. 19604 ORIGINAL PROCEEDING IN DISCIPLINE

ORDER.

The court having considered the petition filed herein to vacate its order, made and entered October 26, 1960, finding one Vi Murphy guilty of contempt of this court, together with the memorandum of law in support thereof; the petition for an order staying execution of the judgment of contempt entered against the said Vi Murphy, the motion for oral argument of said petitions and the petition of Messrs. Lesher, Schmidt and Van. Cise to appear and file a brief as amici curiae herein on behalf of the Colorado Press Association.

It is ordered that the petition to vacate the contempt order, the motion for oral argument, and the petition for leave to appear as amici curiae be, and they are hereby, denied.

It is further ordered that execution of the aforesaid judgment for contempt be, and it is hereby, stayed for a period of ten days, or to and until November 15, 1960.

IT IS FURTHER ORDERED that at the expiration of said ten (10) days and on, to-wit: the aforesaid fifteenth day of November, A. D. 1960, the Manager of Safety and Excise and ex-Officio Sheriff of the City and County of Denver

take the body of the said Vi Murphy and her safely convey to the common jail of the City and County of Denver, there her safely keep and detain for a period of thirty (30) days according to the judgment of this court heretofore entered herein.

BY THE COURT, EN BANC. November 3, 1960.